

State Farm Mutual Automobile Insurance Company (Plaintiff) brings a subrogation action against Daniel Sandoval (Defendant) to recover benefits paid by Plaintiff to its insured for damages caused by Defendant.

On January 19, 2010, a notice of settlement was filed with the Court. Based upon this notice of settlement, the Court ordered the matter to be dismissed on February 28, 2010, unless a motion to vacate was filed prior to the dismissal date.

Despite many months of effort, Plaintiff was unable to obtain Defendant's execution of the settlement documents. By July 10, 2010, Plaintiff was informed by defense counsel that Defendant was not responding to his inquiries regarding the settlement documents.

On August 9, 2010, Plaintiff filed this motion to vacate the Court's dismissal order so that this action can be reinstituted and proceed against Defendant. Pursuant to CCP §473(b) Plaintiff seeks relief from the dismissal on the basis that its counsel inadvertently failed to vacate the order for dismissal in a timely manner when the settlement was not timely completed.

CCP §473(b) allows the Court to set aside a dismissal based upon an attorney's declaration of fault. This relief is mandatory only from those dismissals which are the "procedural equivalent of a default," i.e., those dismissals which deprive plaintiffs of their day in court. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 618). Here, the Court's dismissal deprived Plaintiff of its day in Court.

Plaintiff's unopposed and timely motion to vacate the dismissal is granted.